

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

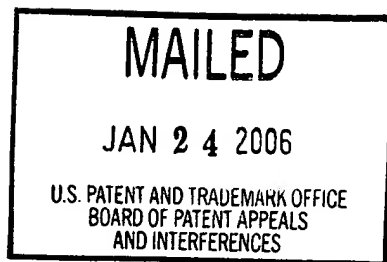
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte NATALIE LASHLEY

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Appeal No. 2005-2317  
Application No. 09/678,537

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ON BRIEF

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Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (mailed June 21, 2001) of claims 1 to 11, 17 and 18. Claims 12 to 16, 19 and 20, which are all of the other claims pending in this application, have been allowed.

We REVERSE and REMAND.

BACKGROUND

The appellant's invention relates to the field of improved methods and apparatus for storage of pills, liquids, and drugs (specification, p. 1). A copy of claims 1 to 8, 10, 11, 17 and 18 is set forth in the appendix to the appellant's brief (filed October 1, 2001). A copy of claim 9 is set forth in the appendix to the examiner's answer (mailed May 2, 2002) .

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Schaffer	692,166	Jan. 28, 1902
Conner	2,217,644	Oct. 8, 1940
Sandhage	3,731,819	May 8, 1973
Moore	4,624,383	Nov. 25, 1986
Klein	4,757,898	July 19, 1988
Buchholz et al. (Buchholz)	4,785,953	Nov. 22, 1988
Ruff	Des. 328,706	Aug. 18, 1992

Claims 1 to 3, 8, 9 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Moore in view of Conner.

Claims 1, 2, 4, 6, 7, 9 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Moore in view of Klein.

Claims 1, 3, 5, 8 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Moore in view of Buchholz.

Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over the art as applied to claim 1 and further in view of Ruff.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Moore in view of either one of Conner and Buchholz as employed against claims 1 and 11 and further in view of either one of Schaffer and Sandhage.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer for the examiner's complete reasoning in support of the rejections, and to the brief for the appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

#### **Claims 1 and 11**

Claims 1 and 11, the independent claims on appeal, read as follows:

1. An apparatus comprising:
  - a base having a plurality of receptacles, each of the plurality of receptacles having a first dimension;
  - a plurality of containers; wherein each of the plurality of containers corresponds to one of the plurality of receptacles;
  - wherein each receptacle has first and second opposing inner walls and the first dimension of each of the receptacles is the distance between that receptacle's first and second opposing inner walls;
  - wherein each container has opposing outer walls and each container has a first dimension which is the distance between the outer parts of the opposing outer walls and the first dimension of each container is about the same as the first dimension of its corresponding receptacle;
  - wherein at least one outer wall of each container is comprised of means for attaching each container to the base; and
  - wherein each of the plurality of containers includes means for attaching each container to each other container so that the containers are stacked one on top of the other while the containers are attached to each other.
11. An apparatus comprising:

a base;  
a plurality of containers;  
means for temporarily attaching each of the plurality of containers to the base;  
wherein each of the plurality of containers is a sealable container;  
wherein each of the plurality of containers can be removed from the base and thereafter sealed;  
wherein each of the plurality of containers includes a first outer wall and wherein the means for temporarily attaching each of the plurality of containers to the base includes a first recess in each first outer wall; and  
wherein each of the plurality of containers includes means for attaching each container to each other container so that the containers are stacked one on top of the other while the containers are attached to each other.

### Teachings of Moore

Moore teaches an environmental building block container system. Moore teaches (column 1, lines 6-18) that:

The primary object of the present invention is to add value to a product by designing its container for a minor extra cost to function as a building block. After the product is consumed these building block containers can be used as children's erector set type toys or as lawn furniture stools, tables, sheds, and various other forms. This added value at no extra cost is expected to increase retail sales.

Another object of the present invention is to provide a conservation aid to the public. Reducing the milk, juice and other container trash on a national basis can reduce the amount of solid waste disposal.

Figures 1 to 4 illustrate a milk container 1 having a tongue 2 and a groove 3.

The top E of the container has an extension 4 and the bottom F of the container has a

indentation 5. Figure 5 shows how two containers interlock along the sides with their respective tongue and groove. Figure 7 shows how two containers interlock along the top and bottom with their respective extension and indentation. The interlocking environmental container allows milk, juice and various food containers to be saved for use as building blocks for such items as children's toys, lawn furniture or sheds. The tongue and groove construction of one pair of opposing sides combined with top extension and bottom indentation along with special corner pieces allows the containers to be built into semi-rigid structures.

### **Teachings of Conner**

Conner's invention relates particularly to a plural compartment container which may be of small size so as to be adapted for convenient carrying as for instance in a women's handbag. The container is adapted for holding various cosmetic preparations, although its use is not necessarily so limited. As shown in Figures 1 and 2, the container includes a plurality of compartment units and a base 5. Each compartment unit may consist of a main compartment member 1 and a closure or cap member 2. The main compartment member 1 is preferably cylindrical or approximately so and the members 1 and 2 are separably connected as for instance by means of threads at 3.

The compartment units are mounted upon and secured to the base 5. Each main compartment member 1 is provided at its lower end with an outward projecting flange or rib 6. When the compartment member is cylindrical, as shown, the flange or rib preferably extends along the entire periphery. The base 5 is provided with a plurality of recesses 5a corresponding in number and in size and shape to the several compartment units, and each recess is undercut so as to be adapted to receive and firmly grip the flange or rib 6 on the corresponding compartment member 1. The resiliency of the material permits the ribbed portion of the compartment member to be forced into the recess notwithstanding the undercut. The resiliency of the material of the base permits the compartment units to be readily detached at will.

### **Teachings of Klein**

Klein's invention relates to tamper resistant packaging systems and more particularly to systems providing consumers and retailers with indicating means readily identifying any package which has been previously removed from the storage and display area. Klein teaches (column 1, line 12, to column 2, line 68) that:

During the last several years, the problems inherent in having food, beverage and non-prescription drug items removed from store shelves for the purpose of introducing poisons into the item, with the item being replaced on the store shelf for purchase by an unsuspecting customer, has received wide-spread media attention, as well as industry-wide recognition as a continuing problem. In an attempt to combat this problem, manufacturers of various food, beverage and

non-prescription drug items have developed and employed tamper resistant packages for their products.

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The tamper resistant packaging system of the present invention overcomes all of the prior art objections and difficulties and establishes an efficient, reliable, and reasonably priced system in which the consumer can be assured that the package being purchased has never been removed from the display shelf prior to that particular consumer's purchase of the product. This goal is attained by providing a support base to which a plurality of individual product packages are securely retained, with each of said packages securely affixed to the support base by frangible or breakable means.

The frangible means are constructed to be irreversibly broken whenever the package is removed from the support base. Consequently, once removed, a package cannot be returned to the display area without the consumer knowing, since the irreversibly broken frangible means provide the consumer with immediate visual notice that the package has been previously removed therefrom.

In employing the present invention, the consumer, prior to removing the product from the display shelf, assures himself that the package being purchased is securely affixed to the support base with the frangible member intact. Once so assured, the consumer removes the desired package from the display, thereby causing the frangible means to be broken for the first time. Once broken, the frangible means are incapable of being reconstructed for subsequent use.

By employing the frangible, product interconnecting means of the present invention, no product can be removed from the display area of the store, and invaded for purposes of contamination prior to replacing the product on the store shelf. If any such would-be product tamperer were to attempt to defeat the system of the present invention, the tampered product could be replaced on the shelf of the store, but would have to be placed in a position in which the frangible elements were already broken. Consequently, a consumer would immediately know that this product had been previously removed from the display zone and replaced. Therefore, a consumer would immediately know that this is a product



to be avoided and would, instead, select an alternate package in which the frangible, removal indicating means contained thereon are intact.

### **Teachings of Buchholz**

Buchholz's invention relates to containers and in particular to containers for carrying and dispensing biological and pharmaceutical reagents and the like. Buchholz teaches (column 1, lines 11-53) that:

#### **2. Description of the Prior Art**

Numerous containers are known in the art for holding and dispensing reagents. Notwithstanding the wide variety of configurations known, the presently available containers still exhibit numerous deficiencies. One problem area involves applying and reading labels on the containers. For example, when small amounts of reagent have been supplied in the past, small reagent containers have typically been used. These containers have small external surface areas and thus very little room has been available for proper labeling of the container. For both large and small containers, there has been a long standing problem regarding orienting one or a group of containers in such a way that their labels always face the user so that the user can readily read the label and thus select the appropriate reagent.

In addition to labeling problems, the prior art containers have been especially deficient with regard to the dispensing of small amounts of reagent. As mentioned above, small reagent volumes have typically meant small reagent bottles. Such bottles are difficult to handle and manipulate. In particular, it is difficult to pipette reagents, in many cases, radioactive reagents, from such small containers. Also, irrespective of the initial amount of reagent included in the container or the size of the container, in all cases it has been difficult to remove the last portion of the reagent from the bottom of the container by, for example, pipetting.

### **SUMMARY OF THE INVENTION**

In view of the above state of the art regarding containers for biological and pharmaceutical reagents and the like, it is an object of the present invention to provide improved containers for such reagents.

More particularly, it is an object of this invention to provide a method and apparatus for holding a container in a pre-determined orientation, so that, for example, a label on the container will point toward the user.

It is an additional object of the invention to provide containers specifically suited to holding and dispensing small quantities of biological and pharmaceutical reagents and the like, including providing a relatively large external surface for labeling such containers.

Figures 1-5 show a container 10 having a D-shaped outer perimeter. As shown most clearly in Figure 1, a plurality of containers 10 is held in rack or holder 24 so that the flat side of the D faces the user. In this way, the portion of label 38 associated with the flat side of the D always faces the user when the container is in the rack. Also, when a cap 40 is fully screwed onto container 10, the printing on label 58 attached to the cap will similarly always face the user. The external surface 18 of the container 10 includes a rib 34 extending around the base of the container. This rib tends to stiffen the overall structure of the container and is used to retain the container in rack 24.

As shown most clearly in Figures 12-13, the rack 24 includes body 56 comprising frame 46 into which has been slid a liner 44. Frame 46 is preferably made out of cardboard or a similar material and liner 46 is preferably made out of a yieldable plastic

material, such as polystyrene. Frame 46 has a series of apertures 54 formed therein, one aperture for each container to be held in the rack. Liner 44 has a similar set of apertures 26, the apertures in the frame and the liner being in alignment when the frame and the liner have been united to form rack 24. The apertures in both the frame and the liner have the same D-shape as the perimeter of the container 10. Container 10 is prevented from rotating within aperture 26 in liner 44 because of the yieldable engagement of inwardly-directed protuberances 48 formed in the walls of aperture 26 against outwardly extending rib 34 formed in the container 10.

Containers 10 are inserted in holder 24 by aligning the asymmetric perimeter of the external surface 18 of container 10 with the similar perimeters of apertures 54 and 26 formed in frame 46 and liner 44, respectively. That is, the flat side of the D-shaped outer surface of the container is aligned with the flat sides of the apertures. The container is then passed through aperture 54 in frame 46 and is received by aperture 26 in liner 44. Protuberances 48 slant slightly outwardly as shown most clearly in Figure 13. Rib 34 engages these protuberances and causes them to yield outwardly so that the bottom of the rib can be moved downwardly until it engages shoulder portion 52 of liner 44. During this process, protuberances 48 snap back over rib 34 to firmly retain container 10 in rack 24.

Buchholz teaches (column 3, lines 21-51) that:

Most preferably, the external surface 18 of container 10 has a D-shaped perimeter as shown in the various figures. This provides a container which is conveniently held by the user with his thumb along the flat side of the D and with his fingers rapped around the curved side of the D. This makes the container extremely easy to handle in such procedures as pipetting.

It is to be understood, however, that the external surface 18 of container 10 can have other configurations besides a D shape. In general, so that the container will go into the rack in only one orientation, both the container and the apertures in the rack should have a perimeter which has mirror symmetry about at most one axis. A D-shaped perimeter satisfies this requirement, in that, it has one axis of mirror symmetry, the axis passing through the midpoint of the flat side of the D, but no other axes of mirror symmetry. A rectangle, on the other hand, has two axes of mirror symmetry (one passing through the midpoints of the long sides of the rectangle and one passing through the midpoints of the short sides of the rectangle), and thus does not satisfy the mirror symmetry requirement and cannot provide the orientation aspects of the present invention. A circle and an equilateral triangle similarly do not satisfy the one axis of mirror symmetry requirement. An isosceles triangle, a trapezoid and a completely asymmetric perimeter, in contrast, do satisfy the requirement. However, the D-shape illustrated herein is preferred over these other shapes because the D-shape is more pleasing to hold and has a natural orientation in the user's hand, as described above.

#### **The examiner's rejection of claims 1 and 11**

The examiner concludes (answer, p. 5) after briefly setting forth the teachings of the applied prior art that:

To employ the particular container of Moore in a combination of a particular container structure for securing to a base with the base having a plurality of receptacles as suggested by any one of Conner, Klein and Buchholz et al would have been obvious in order to ship and organize a plurality of the individual

containers of Moore in a manner similar to any one of Conner, Klein and Buchholz et al.

### **The appellant's argument**

The appellant argues (brief, pp. 7-9) that the applied prior art does not suggest modifying the container of Moore to arrive at the claimed subject matter.

### **Our view**

After reviewing the teachings of Conner, Klein and Buchholz, it is our view that the only suggestion for modifying Moore in the above-noted manner proposed by the examiner stems from hindsight knowledge derived from the appellant's own disclosure and not from the teachings of Conner, Klein and Buchholz.<sup>1</sup> In that regard, the teachings of Conner, Klein and Buchholz provide no incentive whatsoever for a person having ordinary skill in the art at the time the invention was made to have combined a plurality of Moore's containers with a base as recited in either claim 1 or 11.

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<sup>1</sup> The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claims 1 to 11, 17 and 18 under 35 U.S.C. § 103 is reversed.<sup>2</sup>

#### REMAND

We remand this application to the examiner to determine if it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have modified the containers and rack of Buchholz based on the teachings of Moore cited above so as to arrive at the subject matter of any of the claims under appeal.

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 11, 17 and 18 under 35 U.S.C. § 103 is reversed. In addition, this application has been remanded to the examiner for further action.

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<sup>2</sup> We have also reviewed the references additionally applied in the rejection of claims 10, 17 and 18 but find nothing therein that would have been made it obvious at the time the invention was made to a person having ordinary skill in the art to have modified Moore so as to arrive at the claimed subject of either claim 1 or 11.

This application, by virtue of its "special" status, requires immediate action, see  
MPEP § 708.01.

REVERSED and REMANDED

  
CHARLES E. FRANKFORT  
Administrative Patent Judge

  
JEFFREY V. NASE  
Administrative Patent Judge

  
JENNIFER D. BAHR  
Administrative Patent Judge

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